

## **REMARKS**

The above amendment and these remarks are responsive to the Office Action of Examiner Samuel G. Neway mailed 11/28/2006.

Claims 1, 4-8, and 11-13 are in the case, none as yet allowed.

### ***Drawings***

The drawings filed on 19 Mar 2004 have been accepted.

### ***35 U.S.C. 101***

Claim 13 has been rejected under 35 U.S.C. 101 as directed to non-statutory subject matter.

Applicant has amended claim 13 accordingly, and requests that it now be allowed.

### ***35 U.S.C. 112***

Claim 6 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner refers to "said space timing statistics" as lacking antecedent basis.

Antecedent basis for "said space" occurs at line 3 of claim 6, and "timing statistics" are not part of a phrase requiring antecedent basis. The claim has been amended to clarify that "timing statistics" are stored "in said space".

Applicant requests that claim 6 be allowed.

**35 U.S.C. 102**

Claims 1-7 have been rejected under 35 U.S.C. 102(b) over the Cousins et al. article (Embedded genetic allocator..., hereinafter, Cousins.)

Applicant has canceled claims 2-3, and amended claims 1 and 4-7.

Applicant's invention provides a monitor which monitors the performance of a software system (IMS in the preferred embodiment) by reading log records 104 written by the software system to determine its performance relative to response times to end users, and has the extra feature of two tuning knobs 124, 126 to improve use of system resources by that software system monitor. This is brought out in applicant's specification, as follows:

"Startup parameters, or tuning knobs, 122 which may be set by user 120 to adjust tuning bias between memory and CPU usage by the performance monitor, include data space size allocation 124, and timeout value 126."

(Specification, page 12, line 6 ff., emphasis added.)

Cousins addresses a distinctly different problem than that which is addressed by applicant's invention. Cousins logs the performance of the software system relative to its (that is, the software system's) use of hardware and the performance of that hardware, as distinct from response time to the end user. Cousins monitors the performance of an application's use of hardware resources and then balances the use of those resources on behalf of the application.

With respect to claims 4-5, applicant respectfully opines, any similarity between Cousins and applicant's hash table 114, synonym chains 116, transaction time-out value 126, and use of data space 110 is, at best, incidental - for their uses are directed to a different problem, as previously noted with respect to claim 1.

With respect to claim 1, the Examiner states that Cousins discloses a method and product for monitoring a computer application. Applicants have amended the claim to clarify that it is the use of system resources by the monitoring process itself that is tuned, rather than the use of system resources by an application being monitored (as in Cousins). All other claims currently in the case are similarly amended and on that basis, inter alia, distinguish Cousins.

Further with respect to claim 1, the Examiner cites Cousins as teaching "adjustably tuning performance evaluation bias between processor and memory consumption". Applicant reads Cousins on this point as adjusting processor and memory consumption by the application, as distinguished from the monitor itself, as applicant claims, and described

in the specification (quoted above).

Claims 2 and 3 have been canceled and their limitations included in claim 1. With respect to claims 2 and 3, the Examiner states that Cousins discloses "a first tuning parameter for allocating memory for said monitoring performance". [Office Action, page 4; referring to Cousins page 2166, paragraph 2.] Applicant traverses on this point, for here Cousins teaches, as the Examiner notes, "allocating application processing to the various processors and memory banks", which refers to use of system resources by the application being monitored as distinguished from the use of system resources by the monitor itself.

With respect to claims 4-7, applicant respectfully opines, any similarity between Cousins and applicant's hash table 114, synonym chains 116, transaction time-out value 126, and use of data space 110 is, at best, incidental - for their uses are directed to a different problem, and do not address the use of system resources by the monitor, as previously noted with respect to claim 1.

Referring to Cousins, page 2167, second column, the Examiner refers to "... 'malloc'. It allows the user to identify the data buffers to be allocated", and on page 2168 to "each malloc call looks up the appropriate allocation for each buffer from a table provided by the GA Engine... *Buffer Group*...." As applicant understands it, these refer to allocation of data buffers on behalf of the application, and not, as applicant claims, to such on behalf of the monitor itself.

The Examiner refers to Cousins, page 2168, col. 1 as teaching "hashing" [Office Action, page 7]. Cousins states, as the Examiner quotes, "...each malloc call looks up the appropriate allocation for each buffer from a table..." Applicant traverses on this point, for there is no mention by Cousins of hashing.

With respect to claim 6, the Examiner reads Cousins "allocating application processing to ... memory banks ..." [Office Action, page 6, Cousins page 2166, col. 1 paragraph 2] on "allocating space in memory for performance monitoring". Applicant traverses. Again, Cousins is allocating system resources on behalf of the application being monitored, as distinguished from the monitor itself.

Applicant has amended the claims to clarify these distinctions with respect to Cousins, and requests that claims 1, 4-7 be allowed.

### **35 U.S.C. 103**

Claims 8-13 have been rejected under 35 U.S.C. 103(a) over Cousins. The Examiner rejects these claims for the same reasons as stated above with respect to claims 1 and 4-7.

Applicant agrees with the Examiner's observation that the use of a program storage device to store and transport programs is well known. Such is appropriately recited, however, for the purpose of satisfying, in part, the

requirements of 35 U.S.C. 101.

Applicant has canceled claims 9 and 10, and amended claims 8, and 11-13 as previously discussed with respect to claims 1, and 4-7. As amended, these claims 8, and 11-13, also distinguish Cousins as previously discussed with respect to claims 1, and 4-7.

Applicant requests that claims 8 and 11-13 also be allowed.

## SUMMARY AND CONCLUSION

Applicants urge that the above amendments be entered and the case passed to issue with claims 1, 4-8, and 11-13.

The Application is believed to be in condition for allowance and such action by the Examiner is urged. Should differences remain, however, which do not place one/more of the remaining claims in condition for allowance, the Examiner is requested to phone the undersigned at the number provided below for the purpose of providing constructive assistance and suggestions in order that allowable claims can be presented, thereby placing the Application in condition for allowance without further proceedings being necessary.

Sincerely,

Allen Hall

By



Shelley M Beckstrand  
Reg. No. 24,886

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Shelley M Beckstrand, P.C.  
Patent Attorney  
61 Glenmont Road  
Woodlawn, VA 24381-1341

Phone: (276) 238-1972  
Fax: (276) 238-1545